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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1947**

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# No. 502

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FOREMEN'S ASSOCIATION OF AMERICA,
*Petitioner,*

*vs.*

L. A. YOUNG SPRING & WIRE CORPORATION AND NATIONAL LABOR RELATIONS BOARD

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.**

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WALTER M. NELSON,
ALLAN R. ROSENBERG,
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## INDEX


| | Page |
|---|---|
| Opinion below | 1 |
| Jurisdiction | 2 |
| Questions presented | 2 |
| Statutes involved | 3 |
| Statement | 4 |
| Specification of errors to be urged | 6 |
| Reasons for granting the writ | 7 |
| Conclusion | 12 |


### CITATIONS

Cases:


| | |
|---|---|
| *Central Trust Co.* v. *Chicago, R. I. & P. R. Co.*, 218 Fed. 336 (C.C.A. 2, 1914) | 11 |
| *Consolidated Edison Co.* v. *National L. R. Bd.*,, 305 U. S. 197, 59 Sup. Ct. 206, 83 L. Ed. 126 | 9 |
| *Credits Commutation Co.* v. *United States*, 177 U. S. 311, 20 Sup. Ct. 636, 44 L. Ed. 782 | 10 |
| *Demulso Corporation* v. *Tretolite Co.*, 74 F. (2d) 805 (C.C.A. 10, 1934) | 11 |
| *Dolcater, In re*, 106 F. (2d) 30 (C.C.A. 2, 1939) | 11 |
| *Edward G. Budd Mfg. Co.* v. *National Labor Relations Board*, No. 301, U. S. S. Ct., 16 L. W. 3191 | 9 |
| *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U. S. 275, 66 Sup. Ct. 1105, 90 L. Ed. 1230 | 9 |
| *International Union* v. *Eagle-Picher M. & S. Co.*, 325 U. S. 335, 65 Sup. Ct. 1166, 89 L. Ed. 1689 | 9 |
| *L. A. Young Spring & Wire Corporation, Matter of*, 65 N.L.R.B. 298 | 4 |
| *L. A. Young Spring & Wire Corporation* and *Foremen's Association of America, Matter of*, 70 N.L.R.B. 868 | 5 |
| *L. A. Young Spring & Wire Corporation* v. *National Labor Relations Board*, 163 F. (2d) 905 (App. D. C., 1947) | 5 |
| *Mack* v. *Passaic Nat. Bank & Trust Co.*, 150 F. (2d) 474 (C.C.A. 3, 1945) | 11 |

Page

*Packard Motor Car Company* v. *National Labor Relations Board*, 330 U. S. 465, 67 Sup. Ct. 789, 91 L. Ed., No. 10 ..... 4, 8
*Rose, In re*, 86 F. (2d) 69 (C.C.A. 9, 1936) ..... 11
*620 Church Street Bldg. Corp., Re*, 299 U. S. 24, 57 Sup. Ct. 88, 81 L. Ed. 16, rehearing denied 299 U. S. 623, 57 Sup Ct. 229, 81 L. Ed. 458 ..... 2, 12
*Tucker* v. *Alexandroff*, 183 U. S. 424, 46 L. Ed. 264 ... 12
*United States* v. *California Co-op. Canneries*, 279 U. S. 553, 49 Sup. Ct. 553, 73 L. Ed. 838 ..... 10
*United States* v. *Radice*, 40 F. (2d) 445 (C. C. A. 2, 1930) ..... 11
*United States* v. *Terminal R. Asso.*, 236 U. S. 194, 59 L. Ed. 535 ..... 12
*Williams* v. *Morgan*, 111 U. S. 684, 4 Sup. Ct. 638, 28 L. Ed. 559 ..... 9
*Zeitinger* v. *Hargadine-McKittrick Dry Good Co.*, 244 Fed. 719 (C.C.A. 8, 1917) ..... 11

Statutes:

Judicial Code:

Section 240 (28 U.S.C.A. 347) ..... 2, 11, 12
Section 262 (28 U.S.C.A. 377) ..... 2, 12
Labor Management Relations Act, 1947:
P.L. No. 101, 80th Cong., 1st Sess. Ch. 120 ..... 3
National Labor Relations Act:
Act of July 5, 1935, 49 Stat. 449, 29 U.S.C. 151, et seq ..... 3
Miscellaneous:
Federal Rules of Civil Procedure, Rule 24(a)(2), 28 U.S.C.A. following Section 723c ..... 11

SUPREME COURT OF THE UNITED STATES

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FOREMEN'S ASSOCIATION OF AMERICA,
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L. A. YOUNG SPRING & WIRE CORPORATION AND NATIONAL LABOR RELATIONS BOARD

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISRICT OF COLUMBIA.**

Foremen's Association of America, on behalf of itself and its Chapter No. 155, prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the District of Columbia entered on October 29, 1947, denying your Petitioner's motion for leave to intervene and for rehearing in the cause entitled *L. A. Young Spring & Wire Corporation, Petitioner,* v. *National Labor Relations Board, Respondent* (No. 9397, October Term, 1947), and to review the judgment of that Court entered in said cause on September 29, 1947.

## Opinion Below

The order of the United States Court of Appeals for the District of Columbia denying Petitioner leave to intervene (R. 235) was not accompanied by any opinion. The opinion

of the Court accompanying its judgment (R. 226-9) is reported at 163 F. (2d) 905.

## Jurisdiction

The judgment of the United States Court of Appeals for the District of Columbia was entered on September 29, 1947, and its order denying Petitioner leave to intervene was entered on October 29, 1947. The jurisdiction of this Court is invoked under the provisions of Section 240 of the Judicial Code (28 U.S.C.A. § 347). In the event the Court determines that it does not have jurisdiction under the foregoing provision, the jurisdiction of this Court is invoked under the provisions of Section 262 of the Judicial Code (28 U.S.C.A. § 377). *Re 620 Church Street Bldg. Corp.*, 299 U. S. 24, 57 S. Ct. 88, 81 L. Ed. 16, rehearing denied 299 U. S. 623, 57 S. Ct. 229, 81 L. Ed. 458. See page 12, *infra*.

## Questions Presented

1. Whether it was an abuse of discretion for the United States Court of Appeals for the District of Columbia to deny Petitioner's motion to intervene, which was made after the Court rendered its judgment, where, as here, the rights of Petitioner and its members were directly and adversely affected by the Court's judgment, such rights could not be preserved in any other proceeding, neither of the parties to the proceeding desired or were in a position to present Petitioner's position to the Court on rehearing and Petitioner could not reasonably have moved to intervene at an earlier stage of the proceedings.

2. Whether Sections 2(3), 2(11) and 14(a) of the National Labor Relations Act, as amended by Section 101 of the Labor Management Relations Act, 1947, (29 U.S.C. sections 152 (3, 11), 164(a)), infringe on the rights guaran-

teed to Petitioner and its members by the First and Fifth Amendments to the Constitution.

3. Whether Section 103 of the Labor Management Relations Act, 1947 (P.L. No. 101, 80th Cong., 1st Sess., Ch. 120) requires that a certification of representatives under the National Labor Relations Act, made prior to the enactment of the Labor Management Relations Act, 1947, be given effect for a period of one year after it is recognized by the employer or at least until one year after the effective date of the Labor Management Relations Act, 1947.

## Statutes Involved

The National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) as amended by Labor Management Relations Act, 1947 (P.L. No. 101, 80th Cong., 1st Sess., Ch. 120) provides in part as follows:

"Sec. 2. When used in this Act——

* * * * * * *

"(3) The term 'employee' shall include any employee * * * but shall not include * * * any individual employed as a supervisor * * *.

* * * * * * *

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

Section 103 of the Labor Management Relations Act, 1947 (*supra*) provides as follows:

"No provisions of this title shall affect any certification of representatives or any determination as to

the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs."

## Statement

Foremen's Association of America is a voluntary association of supervisory employees. It maintains chapters in various localities and engages in collective bargaining (R. 187-9). It is not affiliated with any other labor organization.[1] Chapter No. 155 of the Foremen's Association of America is a labor organization admitting to membership supervisory employees of the L. A. Young Spring & Wire Corporation at its Los Angeles plant (R. 39, 195).[2]

On a petition duly filed by Petitioner (R. 180-1), the National Labor Relations Board on January 8, 1946, issued a Decision and Direction of Election[3] finding, *inter alia*, that all foremen and assistant foremen in the production and maintenance division of L. A. Young Spring & Wire Corporation's Los Angeles plant constitute an appropriate bargaining unit and directing an election among such employees (R. 194-207, 39-40). The Board's action was taken after a hearing in which Petitioner participated fully (R. 194; 55-6, 75-77, 82-84, 95-100, 115, 118, 120-22, 123-4, 127-9, 132-3, 134-5, 136-44, 146). An election by secret ballot having been conducted and Petitioner having won such election the Board, on February 13, 1946, certified Petitioner as

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[1] See *Packard Motor Car Company* v. *National Labor Relations Board*, 330 U. S. 485, 67 S. Ct. 789, 91 L. Ed., No. 10.

[2] The term "Petitioner" is used herein to designate Foremen's Association of America and its Chapter No. 155 (R. 232).

[3] *Matter of L. A. Young Spring & Wire Corporation*, 65 N.L.R.B. 298.

the exclusive representative of the employees in the aforementioned appropriate unit for the purposes of collective bargaining (R. 207-8).

On August 26, 1946, the Board, acting on charges duly filed by Petitioner, issued a Decision and Order [4] finding that the Company had refused to bargain collectively with Petitioner and ordering the Company to cease and desist from engaging in specified unfair labor practices and to bargain collectively concerning wages and other conditions of employment with Petitioner (R. 36-48; 226). Petitioner participated in these proceedings as a party (R. 37-8).

The Company declined to comply with the Board's order and petitioned the United States Court of Appeals for the District of Columbia to review and set aside the order on the ground that its supervisory personnel were not employees within the meaning of that term as used in Section 2(3) of the National Labor Relations Act and so were not covered by the Act (R. 2-13, 226). In answering, the Board denied the Company's contention and asked the Court to enter a decree directing the enforcement of its order (R. 14-19, 226). The Court heard argument on the matter on May 28, 1947 (R. 226).

On June 23, 1947, the Labor Management Relations Act, 1947, was enacted, effective sixty days thereafter (P. L. No. 101, 80th Cong., 1st Sess., Ch. 120, Sec. 104). Among other things, this statute enacted into law the provisions quoted above at pages 3 and 4.

On September 29, 1947, the Court entered its judgment in this matter, setting aside the Board's order (R. 230), and handed down its opinion (R. 226-229; 163 F. (2d) 905). In its opinion the Court stated that, except for intervening legislation, the *Packard* case (*supra*, note 1) would imperatively require it to decree the enforcement of the

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[4] *Matter of L. A. Young Spring & Wire Corporation* and *Foremen's Association of America, Chapter No. 155*, 70 N.L.R.B. 868.

Board's order (R. 227; 163 F. (2d), 906). However, after examining Sections 2(3) and 2(11) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (*supra*, p. 3), and finding that it was its duty to dispose of the case on the law as it now stands, the Court concluded that it must set the order aside since it "would operate in future in a manner contrary to the amended statute" (R. 227-9; 163 F. (2d), 906-7).

On October 14, 1947, Petitioner filed a timely motion for leave to intervene and for rehearing in the Court below (R. 231-4). In its motion Petitioner pointed out its relationship to Chapter No. 155 and its authority to file the motion. It indicated its apparent, direct and vital interest in the application and validity of the Labor Management Relations Act, 1947. It made clear that although the Board fully represented its position at the inception of the proceeding, since the enactment of the Labor Management Relations Act, 1947, neither of the parties could represent its position, since the Board was compelled to accept the validity of the new enactment. It urged, therefore, that it be permitted to intervene and to be heard on the constitutionality of Sections 2(3), 2(11) and 14(a) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947, and the interpretation and application of Section 103 of the latter Act. Nevertheless, on October 29, 1947, the Court passed an order, without expression of opinion, denying Petitioner's motion for leave to intervene (R. 235).

## Specification of Errors to Be Urged

The United States Court of Appeals for the District of Columbia erred:

1. In refusing to permit Petitioner to intervene in the proceedings below.

2. In refusing to grant Petitioner a rehearing in the proceedings below.

3. In setting aside the Board's order directing the Company to bargain collectively with Petitioner as the exclusive representative of foremen and assistant foremen in the production and maintenance division of the Company's Los Angeles plant.

4. In failing to find that Sections 2(3), 2(11) and 14(a) of the National Labor Relations Act, as amended by Labor Management Relations Act, 1947, deprive Petitioner and its members of rights guaranteed by the First and Fifth Amendments to the Constitution.

5. In failing to find that Section 103 of Labor Management Relations Act, 1947, preserves the validity of a certification as exclusive representative of supervisory employees for a period of one year after such certification is recognized by the employer.

6. In failing to find, alternatively to the preceding paragraph, that Section 103 of Labor Management Relations Act, 1947, preserves the validity of a certification as exclusive representative of supervisory employees for a period of one year after the effective date of such Act where the employer has refused and continues to refuse to recognize such a valid prior certification on the effective date of such Act.

## Reasons for Granting the Writ

This case presents important questions concerning (1) the constitutional validity of the provisions of the National Labor Relations Act, as amended, denying the benefits of the Act to "supervisors", and (2) the interpretation and application of Section 103 of the Labor Management Relations Act, 1947, which delays the effectiveness of the provisions of that Act in certain cases. These are questions

which have not been, but should be, promptly settled by this Court.

It was not until March 10, 1947, over eleven years after the passage of the National Labor Relations Act, that this Court finally determined that "supervisors" were employees within the meaning of that Act and entitled to its benefits. *Packard Motor Car Company* v. *National Labor Relations Board*, 330 U. S. 485, 67 S. Ct. 789, 91 L. Ed., No. 10. During a large part of this period Petitioner and other labor organizations of supervisory employees fought a long, expensive and debilitating legal battle for their very existence. With this Court's decision in the *Packard* case that battle was won. A few months later, however, with the passage of the Labor Management Relations Act, 1947, Congress attempted restrictive, discriminatory legislation to effectively eliminate Petitioner and similar labor organizations from the labor scene. Petitioner challenges this attempt at "legalized" murder. Its challenge, to be meaningful, however, must be heard promptly. Likewise, stability of labor relations and the removal of burdens and obstructions to interstate commerce, the very purposes of the National Labor Relations Act, require that these questions be promptly and authoritatively determined.

The lower Court has not seen fit to hear argument and decide the vital questions as to the validity and construction of the labor relations statutes which Petitioner has drawn into issue; at best it assumed the validity of the provisions in question and a construction unfavorable to Petitioner.

The lower Court's denial of Petitioner's motion to intervene constituted a flagrant abuse of discretion. It is apparent that Petitioner had a direct and immediate interest in the enforcement of the Board's order requiring the Company to bargain collectively with it, and that Petitioner's interest was adversely affected by the judgment of the

Court setting aside the Board's order. Petitioner initiated both the representation and unfair labor practice proceedings before the Board and participated in the hearings and other proceedings before the Board as a party. These proceedings culminated in the issuance of an order by the Board directing the Company to bargain with Petitioner. When this order was brought before the lower Court for review on the Company's petition to set the order aside Petitioner, although still directly and immediately interested, did not intervene since the Board petitioned the Court to enforce the order and was representing fully Petitioner's position.

It was not until the Court set aside the Board's order on the basis of the Labor Management Relations Act, 1947, a statute enacted after the case had been briefed and argued, that the necessity for intervention by Petitioner arose. It then became apparent that the Board could no longer represent Petitioner's position with respect to the new statute since the Board was compelled to accept the statute as a valid enactment. Further, since the Court was of the opinion that the Labor Management Relations Act, 1947, was decisive on the question of the enforcement of the order, and since Petitioner had no other forum in which to protect its rights, it promptly moved for intervention and rehearing.

In similar proceedings persons with comparable interests have been permitted to intervene. *Edward G. Budd Mfg. Co.* v. *National Labor Relations Board,* No. 301, U. S. S. Ct., 16 L. W. 3191; *International Union* v. *Eagle Picher M. & S. Co.,* 325 U. S. 335, 65 S. Ct. 1166, 89 L. Ed. 1689; *Consolidated Edison Co.* v. *National L. R. Bd.,* 305 U. S. 197, 59 S. Ct. 206, 83 L. Ed. 126. See also *Fishgold* v. *Sullivan Drydock & Repair Corp.,* 328 U. S. 275, 66 S. Ct. 1105, 90 L. Ed. 1230; *Williams* v. *Morgan,* 111 U. S. 684, 4 S. Ct. 638, 28 L. Ed. 559. The fact that the motion for

intervention was filed after judgment in this case affords no basis for its denial in view of the course of the proceedings as indicated above. Under all the circumstances the lower Court's denial of the motion to intervene was an abuse of discretion.

Unless this Court grants the writ prayed for important rights of Petitioner and its members will have been extinguished without affording Petitioner an opportunity to be heard. Moreover, important questions as to the validity and construction of a new and important Federal statute will be left unresolved by this Court. The fact that Petitioner was not in a strict sense a "party" to the proceedings in the lower Court is not decisive. It is true that this Court has stated the general rule to be that an order denying leave to intervene is not appealable except where he who seeks to intervene has a direct and immediate interest in a *res* which is the subject of the suit. *United States* v. *California Co-op. Canneries,* 279 U. S. 553, 49 S. Ct. 553, 73 L. Ed. 838. In an earlier case (*Credits Commutation Co.* v. *United States,* 177 U. S. 311, 20 S. Ct. 636, 44 L. Ed. 782) this Court stated the rationale of the exception as follows:

> " 'It is doubtless true that cases may arise where the denial of a right of a third party to intervene therein would be a practical denial of certain relief to which the intervener is fairly entitled, and which he can only obtain by an intervention. Cases of this sort are those where there is a fund in court undergoing administration to which a third party asserts some right which will be lost in the event that he is not allowed to intervene before the fund is dissipated. In such cases an order denying leave to intervene is not discretionary with the chancellor, and will generally furnish the basis for an appeal, since it finally disposes of the intervener's claim by denying him all right to relief.' " (177 U. S., 315-316, 44 L. Ed., 785.)

We submit that the reasons for creating the exception sanctioned by this Court are applicable in like measure to cases in which a *res* is not the subject of the suit. The decisive considerations are whether the movant for intervention will be bound by the judgment of the lower Court, that is, foreclosed from securing relief in any other forum, and whether he is inadequately represented by other parties before the court. In re *Dolcater*, 106 F. (2d) 30 (C. C. A. 2, 1939); *Mack* v. *Passaic Nat. Bank & Trust Co.*, 150 F. (2d) 474 (C. C. A. 3, 1945); *Central Trust Co.* v. *Chicago, R. I. & P. R. Co.*, 218 Fed. 336 (C. C. A. 2, 1914); *United States* v. *Radice*, 40 F. (2d) 445 (C. C. A. 2, 1930); *Demulso Corporation* v. *Tretolite Co.*, 74 F. (2d) 805 (C. C. A. 10, 1934); *Zeitinger* v. *Hargadine-McKittrick Dry Goods Co.*, 244 Fed. 719 (C. C. A. 8, 1917); *Federal Rules of Civil Procedure*, Rule 24 (a) (2), 28 U. S. C. A. following section 723c. In the instant case it is plain that Petitioner has no other forum in which to secure the relief it sought below (National Labor Relations Act, as amended, 29 U. S. C. 160 (f)) and was not adequately represented in the Court below by the parties to the proceedings, especially since the Court below decided the case adversely to the Petitioner herein and the Board, without briefs or argument on what it held to be the controlling effect of intervening legislation and the Board, necessarily assuming the validity of such legislation, did not move for rehearing. Under these circumstances, and particularly where Petitioner was a party to the proceedings before the Board, (*In re Rose*, 86 F. (2d) 69 (C. C. A. 9, 1936)), the order denying intervention should be held appealable and Petitioner should be found to have standing to appeal.

The fact that Petitioner was not in a strict sense a "party" in the Court below may also be urged as a reason why this Court does not have jurisdiction to entertain this petition under Section 240 of the Judicial Code (28 U. S.

C. A. 347). For the reasons set forth above we believe the Court does have jurisdiction to entertain this petition under such provision. Cf. *Tucker* v. *Alexandroff*, 183 U. S. 424, 46 L. Ed. 264; *United States* v. *Terminal R. Asso.*, 236 U. S. 194, 59 L. Ed. 535. But even if this were not the case, the Court nevertheless has jurisdiction to grant the writ prayed for under the provisions of Section 262 of the Judicial Code (28 U. S. C. A. 377). *Re 620 Church Street Bldg. Corp.*, 299 U. S. 24, 57 S. Ct. 88, 81 L. Ed. 16, rehearing denied 299 U. S. 623, 57 S. Ct. 229, 81 L. Ed. 458. For the jurisdiction of this Court to issue a writ to review at least the first question presented by this petition is essential to the preservation of its appellate jurisdiction over the remaining questions presented by the petition.

## Conclusion

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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